



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 11, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0522

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct Any Person from Filing a Complaint	Not Sustained (Training Referral)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

**EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employees were unprofessional when they drove a van playing “Bad Boys” past demonstrators. It was also alleged that Named Employee #2, a supervisor, may have taken steps to discourage or interfere with the Complainant’s filing of a complaint.

**ADMINISTRATIVE NOTE:**

As discussed more fully below, after the discipline meeting in this matter, OPA changed its finding on Allegation #1 for both Named Employees from Sustained to Not Sustained – Training Referral.

**SUMMARY OF INVESTIGATION:**

The Complainant alleged that she observed a marked SPD van driving down the street. She said that the van caught her attention because it was playing the song “Bad Boys,” which was popularized in the show “Cops,” at a loud volume. She stated that a female officer was driving the vehicle. The Complainant characterized the female officer as sticking her head out of the van and “smirking.” The Complainant felt that this was an intentional attempt to antagonize demonstrators who were in the vicinity and was improper under the circumstances.

The Complainant said that she later complained to the East Precinct and was connected with Named Employee #2



(NE#2), a Sergeant. She stated that NE#2 told her that the officer had been playing the song to try to lighten the mood during down time from the protests. The Complainant felt that NE#2 downplayed her concerns. The Complainant recalled that NE#2 told her that even if she filed an OPA complaint it would be sent back to her to speak to the officer, which she was planning on doing anyway. The Complainant was frustrated by this as she believed it showed how officers usually try to defend other officers. The Complainant later filed this complaint and OPA commenced its investigation.

OPA verified that Named Employee #1 (NE#1) was driving the van and that NE#2 was the passenger. OPA interviewed both officers. NE#1 acknowledged playing “Bad Boys” while in the van. She said that she did so to lighten the mood during the demonstrations. She told OPA that she smiled and waved at community members and officers who gave her a thumbs-up. She denied that she intended to antagonize the crowd.

NE#2, like NE#1, said that the playing of the song was meant to lighten the mood and was not purposed to be offensive. She said that she spoke to the Complainant later that day. NE#2 confirmed that she told the Complainant that the case would likely come back to her for supervisory action. She indicated that she provided the Complainant with OPA’s contact information on several occasions.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

In its initial DCM for this case, OPA found that NE#1 and NE#2 riding around in a marked police van while playing “Bad Boys” violated the Department’s professionalism policy. OPA noted that, while they may have intended to “lighten the mood,” the Complainant deemed it offensive and antagonistic. OPA concluded that this interpretation was not unreasonable given what was happening at the time and the ongoing conflicts between SPD and demonstrators.

At the discipline meeting in this matter, the chain of command for both officers recognized, like OPA, that the Named Employees’ decision-making during this incident was not good and that the Named Employees should not have engaged in those actions. However, the chain of command noted that both officers had more than 20 years of work experience with SPD and had never received any prior discipline, let alone been found to have engaged in unprofessionalism. They further asserted that, while a poor choice, there was insufficient evidence to establish that the Named Employees acted with the intent to antagonize demonstrators or acted maliciously, which would have necessarily warranted discipline.

Ultimately, while OPA remains concerned with the Named Employees’ actions in this case, OPA concurs with the chain of command that, given the lack of evidence of ill intent and the officers’ lack of prior discipline, retraining rather than discipline is the appropriate result. Accordingly, OPA herein changes its finding from Sustained to Not Sustained – Training Referral for both Named Employees.



- **Training Referral:** The Named Employees' chains of command should discuss this incident with them and counsel them on their actions and decision-making. Both Named Employees should be informed that their conduct was outside of the Department's expectations and should not be repeated. Lastly, the Named Employees should be notified that future similar conduct will result in a Sustained finding and the imposition of discipline. This counseling and any retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #1).

Recommended Finding: **Not Sustained (Training Referral)**

**Named Employee #2 - Allegation #2**

***5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct Any Person from Filing a Complaint***

SPD Policy 5.002-POL-3 requires that employee refrain from interfering with, hindering, or obstructing any person from filing a complaint.

It is undisputed that NE#2 provided the Complainant with OPA's contact information and that the Complainant ultimately filed a complaint. The question here is whether NE#2's statement to the Complainant that, even if she made a complaint, it would be returned to NE#2 for supervisory action served to interfere with or hinder the Complainant from proceeding in that manner.

As a threshold matter, NE#2 should not have been the supervisor assigned to speak with the Complainant about her concerns as NE#2 was involved in the potential misconduct. NE#2 should have recognized this, recused herself, and had another supervisor handle the complaint. This was the case even given how chaotic the day was.

That being said, the evidence does not establish that NE#2 tried to obstruct or interfere with the Complainant's filing of a complaint. This was so even though NE#2 stated her belief – inaccurately as indicated by this investigation – that the case would be returned to her for handling. Indeed, the Complainant did, in fact, contact OPA and commenced this investigation.

However, OPA finds that NE#2 would be well served with retraining and a reminder that similar situations should be handled differently in the future.

- **Training Referral:** NE#2's chain of command should discuss with her how she handled the Complainant's concerns. She should be reminded that she should not be involved with complaints in which she is involved. She should further be reminded not to opine on how OPA may handle a case. Even if it did not occur here, this could serve to discourage a community member from later filing a complaint. NE#2 should be instructed that future similar conduct will result in a recommended Sustained finding and discipline. This retraining and



counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**